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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------|------------------------|
| 10/608,026 | 06/30/2003 | Alan M. Zamore | 2003-5 | 7377 |
| 23401 | 7590 | 11/29/2007 | | |
| ALAN M ZAMORE 23 MOUNTAIN AVE MONSEY, NY 10952 | | | EXAMINER SERGENT, RABON A | |
| | | | ART UNIT 1796 | PAPER NUMBER |
| | | | MAIL DATE 11/29/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/608,026 | Applicant(s) ZAMORE, ALAN M. | |
| | Examiner Rabon Sergent | Art Unit 1796 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-22, 32 and 33 is/are allowed.
- 6) ☒ Claim(s) 23, 24, 26-28, and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. In view of the lack of disclosure pertaining to the subject matter of claim 34 within the parent applications, the effective date of the subject matter of claim 34 is considered to be the actual filing date of the instant application, specifically, June 30, 2003.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 23, 24, 26-28, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neil et al. ('415 or '551) in view of Lee et al. (US 2002/0018866 A1).

O'Neil et al. disclose the crosslinking of a thermoplastic polyamide copolymer by mixing the copolymer with an allylic crosslinking promoter and irradiating the mixture. See abstracts. Patentees further disclose that the compositions may be used in the medical field or as insulation in the wire and cable industry. See column 4, lines 49+. The position is taken that applicant's claimed increased tolerances are inherent features of the composition and that the disclosed medical applications inherently encompass sterilization procedures or features. Though

patentees teach a preference for the use of PEBAX type copolymers containing polyether blocks separated by polyamide blocks, wherein the polyamide blocks are based upon nylon-11, nylon-6, or nylon-6,6, it is not seen that patentees' teachings are limited to these copolymers, and the position is further taken that one of ordinary skill in the art would have expected the disclosed method to be suitable for use with other polyamide copolymers. Accordingly, while O'Neil et al. fail to specifically disclose the use of nylon-12 segments and polyester segments within his PEBAX type copolymer, the use of PEBA and polyester containing PEBA copolymers for use in medical applications, wherein the polyamide segment is derived from nylon-12, was known at the time of invention. This position is supported by the teachings of Lee et al. at paragraphs [0022] through [0024] and [0027] through [0029]. Accordingly, the position is taken that it would have been obvious to modify compositions that correspond to applicant's PEBA copolymer by crosslinking PEBA copolymers as disclosed by Lee et al. using the method of O'Neil et al. so as to obtain compositions suitable for medical applications having the improved characteristics taught by O'Neil et al.

4. Claims 12-22 are allowable with respect to the examined species of copoly(ether-ester-amide) polymer and nylon. The remaining species of these claims remain withdrawn from consideration.

Any inquiry concerning this communication should be directed to R. Sergent at telephone number (571) 272-1079.

R. Sergent
November 26, 2007


RABON SERGENT
PRIMARY EXAMINER